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OEA

SERVICE DATE – FEBRUARY 1, 2013

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB-1107X

West Michigan Railroad Co. - Abandonment Exemption - in Van Buren County, Mich.

BACKGROUND

In this proceeding, West Michigan Railroad Co. (WMI or railroad) filed a notice with the Surface Transportation Board (Board) under 49 C.F.R. § 1152.20 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of an approximately 10.67-mile rail line. The rail line extends from Milepost 19.88 (west of the rail line's crossing of 56th Street near Lawrence, Michigan) and Milepost 30.55 (east of Kalamazoo Street in Paw Paw, Michigan) in Van Buren County, Michigan (MI) (the Line). A map depicting the Line in relationship to the area served is appended to this environmental assessment (EA).

DESCRIPTION OF THE LINE

As stated in the railroad's environmental and historic reports, the Line is located in a rural area of southwest MI. Land use and cover along the Line includes rural residences, forests, and farmland. The communities of Lawrence and Paw Paw are located at the western and eastern termini of the Line, respectively. The Line is also located on the shore of Lake Cora and separates adjacent residents from otherwise unfettered access to their lake-side docks and shorelines. The width of the right-of-way is generally 50 feet.

According to the railroad, structures on the Line are limited to two bridges that carry the Line over waterways. One bridge is an approximately 37-foot-long steel and wood trestle at Milepost 22.54, and the other is an approximately 67-foot-long wooden structure at Milepost 29.8. WMI has no records confirming the age of the structures, but believes both are most likely at least 50 years old.

According to the railroad, the Line was likely constructed by the Toledo and South Haven Railroad in 1877. Ownership of the Line has changed hands through a series of railroad mergers or acquisitions. Finally in 1995, WMI, which was formerly known as the West Jersey Railroad Company, assumed operation and ownership of the Line through 1995 bankruptcy proceedings of the Kalamazoo, Lake Shore & Chicago Railway Company.

There has been no local or overhead freight rail traffic on the Line for over 2 years. The railroad is not aware of any hazardous waste sites on the Line that would be affected by the proposed abandonment.

ENVIRONMENTAL REVIEW

The railroad submitted an environmental report that concludes the quality of the human environment would not be affected significantly because of the abandonment or any post-abandonment activities. The railroad served the environmental report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)].¹ OEA reviewed and investigated the record in this proceeding.

For environmental reviews of rail line abandonments, the Board's role is limited to the anticipated impacts of the abandonment proposal before the agency. This includes the diversion of traffic to other rail lines or transportation modes and the consequences of removing the track and related structures. Iowa Southern R. Co. – Exemption – Abandonment, 5 I.C.C.2d 496, 501 (1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

Diversion of Traffic

Because there is no rail traffic on the Line, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Salvage Activities

Impacts from salvage and disposal of a rail line typically occur from the removal of tracks and ties, removal of ballast, dismantling of any structures that may be present on the right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way or, if necessary, via the construction of new access points to the right-of-way. In this proceeding, WMI intends to remove the rail and other salvageable materials, such as tie plates, fasteners, crossties and possibly the upper layer of ballast. The salvage activities would take place using the existing right-of-way and public and private access points, and would not involve any excavation, grading or other ground-disturbing activities. Any solid waste generated by the salvage process would be disposed of appropriately. The two bridges would remain in place. WMI would dispose of any portion of the right-of-way it may own and allow easements to expire.

¹ The railroad's environmental and historic reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB-1107X.

The railroad states that the Line is not located within the Michigan Coastal Zone Management Area and believes that the proposed abandonment would be consistent with existing local land use plans. Friends of the Kal-Haven Trail, a local advocate of recreational trail use, and the Village of Paw Paw wrote to express an interest in potentially converting the Line's right-of-way into a recreational trail. However, the Lake Cora Corporation Board, which represents homeowners around Lake Cora, opposes recreational trail use because the Line bisects their residential properties, and would place the trail very close to their homes and privately owned lake-side docks and beach access points.

In its response, the Natural Resources Conservation Service (NRCS) concurs with the railroad's environmental report that the proposed abandonment would not contribute to the loss of prime farmland.

Two offices of the U.S. Army Corps of Engineers, Detroit District (Corps) replied to the railroad's environmental report. In a January 23, 2013 letter (Corps File No. LRE-2013-00011-280), the Corps' Compliance and Enforcement Branch notes that the State of Michigan has assumed the Corps' regulatory responsibilities under Section 404 of the Clean Water Act (33 U.S.C. § 1344); and therefore, a separate authorization from the Corps is not required. The Michigan Department of Environmental Quality (MDEQ), which assumed the Section 404 permitting authority, has not responded to the railroad's environmental report. Although the railroad does not intend to perform any salvage activities in wetlands or other waters of the United States, the Line is located near some water resources. Therefore, OEA is recommending a condition that would require the railroad to consult with MDEQ regarding its Section 404 permitting requirements and, if applicable, comply with the reasonable requirements of MDEQ. OEA has provided a copy of this EA to MDEQ for review and comment.

The Corps' Environmental Analysis Branch also replied in a January 8, 2013 letter. It states that there are no current plans to develop waterways or initiate flood control studies in the vicinity of the proposed abandonment. The Corps also states that the proposed abandonment should not have an impact on existing floodplains because of the limited nature of the proposed salvage activities.

The U.S. Fish and Wildlife Service, Midwest Region Office in Bloomington, Indiana (USFWS) has not responded to the proposed abandonment or to the railroad's statement that it does not believe that the proposed abandonment would have any impact on endangered or threatened species, or on any area designated as a critical habitat. Based on the information available to date, OEA is unable to determine whether any federally listed threatened or endangered species exist in the area of the proposed abandonment. However, due to the temporary nature and very limited scope of the proposed salvage activities, OEA believes that potential impacts to any such species could be appropriately mitigated through consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (ESA). Accordingly, OEA recommends that a condition be imposed requiring the railroad to contact the USFWS – East

Lansing Field Office² prior to beginning salvage activities to discuss potential impacts to any federally listed endangered or threatened species. The railroad shall report the results of this consultation to OEA in writing. Should any potential impacts be identified, the railroad shall consult with OEA and USFWS to develop appropriate mitigation measures. OEA has provided the USFWS with a copy of this EA for review and comment.

The U.S. Environmental Protection Agency, Region 5 (USEPA) has not responded to the railroad's environmental report. OEA has provided the USEPA with a copy of this EA for review and comment.

HISTORIC REVIEW

The railroad submitted an historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and provided a copy to the Michigan State Housing Development Authority, State Historic Preservation Office (or SHPO), pursuant to 49 C.F.R. § 1105.8(c). As a component of its public outreach, the railroad placed a notice of the proposed abandonment in The Courier-Leader of Paw Paw, MI on December 21, 2012. The railroad also notified local governments of the proposed abandonment. Both the historic report and this EA are available on the Board's Web site, and OEA has provided the SHPO with a copy of this EA.

In a January 4, 2013 letter, the SHPO directed the railroad to resubmit the Section 106 review request using the SHPO's mandatory application form available on its website. WMI complied with the SHPO's directions and resubmitted the review request on January 17, 2013. At the time this EA was prepared, the SHPO has not submitted comments on WMI's proposed abandonment; and therefore, OEA has not been able to consider the SHPO's opinion before determining whether the proposed project could affect historic properties. Accordingly, we are recommending a condition requiring WMI to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

OEA conducted a search of the Native American Consultation Database at <http://grants.cr.nps.gov/nacd/index.cfm> (database searched January 14, 2013) to identify federally recognized tribes that may have ancestral connections to the project area. The database identified the following five federally recognized tribes as having connections to Van Buren County, MI:

- Citizen Potawatomi Nation, Oklahoma;
- Forest County Potawatomi Community, Wisconsin;

² Located at 2651 Coolidge Road, East Lansing, MI 48823

- Hannahville Indian Community, Michigan;
- Pokagon Band of Potawatomi Indians, Michigan and Indiana; and
- Prairie Band of Potawatomi Nation, Kansas.

OEA has provided each tribe with a copy of this EA for review and comment

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

1. West Michigan Railroad Co. shall consult with the Michigan Department of Environmental Quality (MDEQ) prior to beginning salvage activities regarding permitting requirements under Section 404 of the Clean Water Act (33 U.S.C. § 1344) and, if applicable, shall comply with the reasonable permitting requirements of MDEQ.
2. West Michigan Railroad Co. shall contact the U.S. Fish and Wildlife Service, East Lansing Field Office (USFWS) prior to beginning salvage activities to discuss potential impacts to any federally listed endangered or threatened species. The railroad shall report the results of this consultation to the Board's Office of Environmental Analysis (OEA) in writing. Should any potential impacts be identified, the railroad shall consult with OEA and USFWS to develop appropriate mitigation measures.
3. West Michigan Railroad Co. (WMI) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. WMI shall report to the Board's Office of Environmental Analysis regarding any consultations with the Michigan State Historic Preservation Office and the public. WMI may not file its consummation notice until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations and no salvage activities), discontinuance of service without abandonment, and

continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within the time specified in the Federal Register notice. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at 202-245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, D.C. 20423.

COMMENTS

If you wish to file comments regarding this EA, please send an **original and one copy** to Surface Transportation Board, Washington, D.C. 20423, to the attention of Dave Navecky, who prepared this document. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-1107X in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Dave Navecky, the environmental contact for this case, by phone at 202-245-0294, fax at 202-245-0454, or e-mail at david.navecky@stb.dot.gov.

Date made available to the public: February 1, 2013.

Comment due date: February 15, 2013.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment